

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JAMES ROBERTS, JR., on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

JR ENGINEERING, INC.,

Defendant.

CASE NO. 5:19-CV-00110

JUDGE SARA LIOI

**DEFENDANT J.R. ENGINEERING,
INC.'S MOTION TO STRIKE
CERTAIN PORTIONS OF THE
DECLARATIONS OF JAMES
ROBERTS, JR.; JACOB PASTORIUS;
AND TRISTAN ADKINS**

Defendant, J.R. Engineering, Inc. (JRE) moves this Court for an Order striking certain portions of the Declarations of Plaintiff James Roberts, Jr. and Opt-In Plaintiffs Jacob Pastorius and Tristan Adkins which have been filed in support of Plaintiffs' Motion for Conditional Certification, Expedited Opt-In Discovery, and Court Supervised Notice to Potential Opt-In Plaintiffs.

JRE seeks to have the following portions of the Declarations stricken:

- 1) Paragraphs 5, 11, and 14 of Roberts's Declaration;
- 2) Paragraphs 4 and 7 of Pastorius's Declaration; and,
- 3) Paragraphs 4 and 7 of Adkins's Declaration.

Paragraphs 5 and 14 of Roberts's Declaration and Paragraph 4 of Pastorius's and Adkins's must be stricken because they consist of rote allegations from Plaintiff's Complaint that are pled in the alternative. While alternative pleading is proper in a Complaint, statements in a declaration must be true and accurate to the best of the declarant's knowledge. It is impossible to read an "and/or" statement and determine what specifically the declarant is stating is true. For this reason, these Paragraphs must be stricken from the Declarations.

Paragraphs 11 and 14 of Roberts's Declaration and Paragraph 7 of Pastorius's and Adkins's Declarations must be stricken because these paragraphs consist of conclusory statements that Plaintiffs are "similarly situated." Such statements constitute improper opinions on conclusion of law, rather than facts and evidence to be considered by the Court, and should be stricken.

For these reasons, set forth more fully in the attached memorandum in support, JRE respectfully requests that this Court strike Paragraphs 5, 11, and 14 of Roberts's Declaration and Paragraphs 4 and 7 of the Declarations of Pastorius and Adkins.

Respectfully submitted,

/s/ Morris L. Hawk

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Inc.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 20, 2019, a copy of the foregoing instrument was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Morris L. Hawk
Morris L. Hawk (0065495)
One of the Attorneys for Defendant